TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 207.

THE IOWA RAILROAD LAND COMPANY, PLAINTIFF IN ERROR,

vs.

CLAUDE F. BLUMER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED FEBRUARY 16, 1906.

(20,098.)

(20,098.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 207.

THE IOWA RAILROAD LAND COMPANY, PLAINTIFF IN ERROR,

vs.

CLAUDE F. BLUMER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Caption	1	1
Appellant's abstract	1	1
Petition	2	1
Answer	3	2
Reply	6	4
Amendment to reply	7	4
Supplemental answer and counter-claim	9	6
Amendment to reply	11	7
Evidence for plaintiff	12	7
Exhibit A—Receipt of receiver, May 3, 1888	12	7
Deposition of R. W. Carraher	12	7
D. E. Kirby	13	8
Mrs. Hope Barholtz	14	9
Elmer Calkins	15	9
Albert Wolett	16	10
Elmer Calkins (recalled)	16	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1906.

	Original.	Print.
Deposition of George Reid	17	10
Elmer Calkins (recalled)	17	11
Claude F. Blumer	18	12
Charles I. Read	20	13
W. R. Reid	22	14
Otto Zeiglan	23	14
Claude F. Blumer (recalled)	23	15
Charles N. Martin	23	15
Testimony of Claude F. Blumer	24	15
George W. Wakefield	25	16
Exhibit J—Letter, Wakefield to Carraher, June 2, 1888	25	16
Stipulation as to facts	27	17
Testimony of J. S. McSparren	27	17
Plaintiff rests	27	17
Evidence for defendant	27	17
Deposition of Samuel S. Burdett	27	17
Exhibit A—Letter, Stockslager to Van Deventer, September 6, 1887	34	21
Letter, Van Deventer to Commissioner, August 27, 1887	34	22
Letter, Stockslager to Van Deventer, August 25, 1887	35	22
Letter, Commissioner to Register and Receiver, July 11, 1891	35	23
Letter, Acting Secretary to Commissioner, June 17, 1891	36	23
Letter, Commissioner to Register and Receiver, December 3, 1883	37	24
B—Letter, Hall to Curtis & Burdett, July 28, 1891	38	25
C—Letter, Curtis & Burdett to Hall, October 1, 1891	39	25
A (Continued)—Supplemental selection	39	25
Letter, Commissioner to Wakefield, June 9, 1886	41	26
Exhibit No. 1—Certified list No. 48	41	27
No. 2—Patent from State of Iowa	44	29
No. 3—Deed, March 28, 1887	46	30
No. 4—Transcript of tract book	47	30
No. 5—Transcript of register	47	30
Plaintiff's Exhibit K—Map (not set out)	47	30
H—Lease (not set out)	48	31
L—Location I. C. R. R. (not set out)	49	31
M—Letter, Hall to Lohr, Gardiner & Lohr, August 18, 1902	49	31
N—Letter, Hall to Lohr, Gardiner & Lohr, August 20, 1902	50	32
O—Letter, Hall to Lohr, Gardiner & Lohr, August 26, 1902	51	33
Evidence closed	51	33
Argument and submission	51	33
Final decree	52	33
Appeal	52	34

	Original.	Print.
Appellee's amendment to abstract	53	34
Motion to strike supplemental answer, &c	54	35
Exhibit A—Receiver's receipt, May 31, 1888	55	35
J—Letter, Wakefield to Carraher, June 2, 1888	56	36
Opinion	58	37
Judgment	66	42
Clerk's certificate	67	43
Bond on writ of error	68	43
Writ of error	70	44
Citation and service	73	45

1 In the Supreme Court of Iowa, January Term, 1905. In Equity.

CLAUDE F. BLUMER, Appellee,
vs.
IOWA RAILROAD LAND COMPANY, Appellant.

Appeal from Woodbury District.

Hon. J. F. Oliver, Judge.

Lohr, Gardner and Lohr, Attorneys for Appellee.
Chas. A. Clark & Son, Wm. G. Clark, Attorneys for Appellant.

Due, legal and timely service of Ap-ellant's Abstract is hereby accepted and copies received this — day of December, A. D., 1904.

Attorneys for Appellee.

Appellant's Abstract.

On October 23rd, 1902, appellee as plaintiff, filed in the office of the clerk of the District Court of Woodbury County, Iowa, his

2 *Petition in Equity*

as follows:

Plaintiff for cause of action against the defendant states:

Par. 1. That he is the owner in fee simple of the following described real estate situated in Woodbury County, Iowa, to-wit: The northeast quarter of the northeast quarter (NE¼ NE¼) of Section one (Sec. 1,) Township Eighty-nine, (T 89) North, Range Forty-six, (R 46,) West, containing about forty acres according to the government survey.

Par. 2. That plaintiff and his immediate grantor have been in the open, notorious, exclusive, continuous adverse possession of said real estate under a claim of right and title for more than ten years preceding the commencement of this suit, and that plaintiff is now in the possession of the same.

Par. 3. That plaintiff is credibly informed and believes that defendant makes some claim to said real estate adverse to the plaintiff's estate therein.

Par. 4. That said defendant is a corporation duly organized under the laws of the state of Iowa, relating to the organization of corporations for pecuniary profit, and is doing business in said state as such corporation.

Wherefore, the plaintiff prays that his title in and to the real estate above described be quieted and confirmed, and that the defendant be barred and estopped forever from having or claiming any right or title to said premises adverse to the plaintiff, and that

plaintiff have judgment quieting his title therein against the adverse claims of defendant, and for such other and further relief as may be just and equitable, and for the costs of this action.

Said petition was duly verified.

Thereafter on November 6th, 1902, appellant filed in said cause the following

3 *Answer.*

For answer to plaintiff's petition defendant states:

Par. 1. Defendant denies that plaintiff is the owner in fee simple of the real estate described in his petition, and denies that plaintiff has any right, title or interest therein, or any claim thereto, or color of right or title thereto.

Par. 2. As to whether plaintiff and his grantors have been in possession of said real estate for more than ten (10) years prior to bringing such action, this defendant has no knowledge or information sufficient to form a belief.

Defendant states that in event plaintiff has been so in possession, such possession was in no sense adverse to the rights of this defendant, and that the same are without color of title or claim of right to said real estate, and was at the sufferance merely of the owner and holder of the legal title of said real estate.

Par. 3. For further answer to paragraph 3 of said petition, defendant states that the legal title to said real estate is, and at all times mentioned in plaintiff's petition has been in the United States. That on or about the 15th day of May, 1856, the Congress of the United States passed a certain Act to aid in the construction of a line of railroad from Dubuque to Sioux City, in the State of Iowa, which said Act was entitled "An Act Making a Grant of Lands to the State of Iowa in Alternating Sections to Aid in the Construction of Certain Railroads in said State," and was approved on said last mentioned date, and which Act granted said lands to the State of Iowa in trust for the railroad companies which should be designated by said State to complete said roads and to earn said grants, which said Act and trust was duly accepted by the said State of Iowa by an Act of the Legislature of said State approved July 14th, 1856.

That thereafter, by a certain Act approved April 7th, 1868,
4 and being Chapter 124 of the Acts and Resolutions of the Twelfth General Assembly of the State of Iowa, the said State of Iowa designated the said Iowa Falls and Sioux City Railroad Company to construct and complete the then incompleted portion of said road west of Iowa Falls and granted on conditions contained in said Act the unearned portion of said land granted west of Iowa Falls to said Iowa Falls & Sioux City Railroad Company, excepting however, certain lands granted to the Dubuque, Belleview & Sabula Railroad Company.

That the Iowa Falls & Sioux City Railroad Company duly constructed its railroad and became entitled to the lands provided for in the aforesaid Acts of Congress and of the Legislature of Iowa.

That the land in question was selected and designated by the State

of Iowa as a portion of the lands granted and received by said State under said Act of May 15, 1856, during said year of 1856.

That said tract of land was again selected and designated by the Iowa Falls & Sioux City Railroad Company on June 19th, 1884, and again on April 24, 1885, as lands to which said Company was entitled under the aforesaid land grants, which said selection and designation was duly filed in the office of the Land Commissioner of the United States, at Washington, D. C.

Par. 4. That on March 28th, 1887, the Iowa Falls & Sioux City Railroad Company sold and conveyed to the defendant, Iowa Railroad Land Company, all its remaining unsold lands, and all its claims for lands under the grant aforesaid, including the claim to the land in controversy in this action.

Par. 5. That the Iowa Falls & Sioux City Railroad Company and this defendant, having duly made application to the Land Commissioner of the United States that title to the land in question be certified and conveyed to said Iowa Falls & Sioux City Rail-
5 road Company, which said application was so made and filed with said Commissioner on ——— day of August, 1891, and which said conveyance and certification would enure to the benefit of this defendant under the aforesaid conveyance from said Railroad Company to defendant.

Par. 6. That as defendant is advised and states said Land Commissioner has at all times held said land to be rightfully subject to certification and conveyance to said Railroad Company under said grant, but has neglected and failed to make such certification and conveyance although often requested by defendant and by said Railroad Company so to do.

Par. 7. The defendant on information and belief, charges and avers that the sole and only claim of plaintiff in or to the premises in question arises through one John Carraher, who, at some date unknown to this defendant, made an entry of a timber claim in and to said real estate in the proper office of the Land Department of the United States.

That it was within the jurisdiction and power of the Land Commissioner of the United States to pass upon and finally determine the nature, validity and extent of any rights of said Carraher under and by reason of said timber claim entry as against the conflicting claim of said Railroad Company under said railroad grant, and the aforesaid selection of said land thereunder.

That said Land Commissioner, after due notice to said Carraher, on July 11th, 1891, acting within his jurisdiction and powers rejected said timber claim and cancelled the same for conflict with the rights of said Railroad Company and this defendant, which said ruling of said Commissioner was and is binding upon plaintiff as grantee of said Carraher, and is not subject to the review of this honorable court.

That all the foregoing facts are, and at all times have been well known to the plaintiff.

6 Par. 8. That by reason of the premises the legal title and ownership of said land still remains in the United States. That plaintiff has no right or claim in or to said real estate. That

any acts of possession or control of said real estate by plaintiff have been at the sufferance of the United States, and beyond the right or control of this defendant to interfere with or resist in any manner, for that defendant has not yet been invested with the legal title thereto.

That the determination of the rights of the parties is solely within the jurisdiction and powers of the Land Commissioner of the United States subject to an appeal to the Secretary of the Interior.

That this honorable court is wholly without jurisdiction or power to try the aforesaid rights of the parties in and to said real estate.

Wherefore defendant prays that plaintiff's petition be dismissed, and that defendant have judgment, and costs.

Said answer was duly verified.

On December 31, 1902, plaintiff filed in said cause his

Reply

as follows:

Comes now the plaintiff and for reply to the answer of defendant denies each and every allegation therein contained, except such as are hereinafter specifically admitted.

Par. 2. Plaintiff admits all the allegations of paragraph 3 of said answer, except the legal conclusion of the first sentence of said paragraph, that the legal title to the real estate is and at all times has been in the United States, which he denies.

Par. 3. He admits the allegations of paragraph 4, and as to those of paragraphs 5 and 6, he has neither knowledge nor information sufficient to form a belief.

7 Par. 4. He admits the allegation of paragraph 7 that he claims title to said real estate through one John Carraher as his grantor, and that said Carraher about the year 1887 made an entry of a timber claim for said real estate in the office of the Land Department of the United States, and that about the 11th day of July, 1891, said timber claim entry was cancelled by the Commissioner of the General Land Office of the United States, but denies that said timber culture claim was the sole or only source of claim of right or title to said real estate by said Carraher.

Wherefore, said plaintiff prays as in his original petition.

On January 31, 1903, plaintiff filed in said cause the

Amendment to Reply.

as follows:

Comes now the plaintiff in the above entitled cause and for amendment to his reply herein alleges and states:

Par. 1. That the land in controversy in this action is a part of and within the six miles limit of the land granted to the state of Iowa by the act of Congress of May 15, 1856, which act is found in the 11th Statutes at Large 9 of the United States, to aid i nthe construction of a railroad from the city of Dubuque in the state of Iowa to a point on the Missouri river, near Sioux City, in said state. That the lands

granted by said act to said state for the purpose mentioned were, by the act of the legislature of Iowa, passed July 14, 1856, granted to the Dubuque & Pacific Railroad Company, on the terms contained in said act and in the act of congress aforesaid.

Par. 2. That the map of the definite location of the line of said railroad was filed in the office of the commissioner of the general land office of the United States on October 13, 1856, by said railroad company, and the location of the line of said railroad was thus definitely fixed.

8 Par. 3. That when the definite location of said railroad became fixed by the filing of said map, all the land granted by said act of congress within the six mile limits of said grant passed to the state of Iowa in trust for the uses and purposes mentioned in said act.

Par. 4. That thereafter said Dubuque & Pacific Railroad Company became insolvent and all its property and rights were acquired by the Dubuque & Sioux City Railroad Company, which said railroad company built said road from Dubuque to Iowa Falls in said state of Iowa, in accordance with the provisions of the acts of congress and of the legislature of the state of Iowa, as aforesaid.

Par. 5. That thereafter, as alleged in defendant's answer, the state of Iowa designated the Iowa Falls & Sioux City Railroad Company to construct and complete the incompleted portion of said road west of Iowa Falls, and granted to said railroad company on conditions contained in said act referred to, the unearned portion of lands formerly granted to the Dubuque & Pacific Railroad Company, excepting certain lands as stated in said answer.

Par. 6. That said Iowa Falls & Sioux City Railroad Company constructed said railroad from Iowa Falls to Sioux City in said state of Iowa and duly completed said road in accordance with the provisions of the acts of congress and the legislature of Iowa, prior to the first day of January, 1872.

Par. 7. That upon the construction and completion of said road as prescribed by the act of the legislature of Iowa aforesaid, the said lands granted by the act of congress in trust to the state of Iowa, were earned by said Iowa Falls & Sioux City Railroad Company and passed to said railroad company under said acts and said railroad company became absolutely and legally entitled to the same.

9 Par. 8. That thereafter and during the year 1888 the plaintiff's grantor, John Carraher, acting on the claim and believing that the land in controversy was public land of the United States and subject to entry under the tember culture laws of the United States, went into possession of the same and filed his claim therefor in the land office of the United States at Des Moines, Iowa, and paid the fees allowed by law in cases of timber culture claims, and received a receipt for the same from the proper officers in charge of said land office, and plaintiff and his grantor have been in possession of said land ever since under said claim of right and color of title, and have continued to occupy, improve and cultivate the same.

Wherefore, plaintiff prays as in his original petition.

Thereafter, on May 28, 1904, appellant filed in said cause its

Supplemental Answer and Counter Claim

as follows:—

The defendant, by leave of Court, for supplemental answer and counter claim, states:

Par. 1. That since its formal answer was filed in this cause, the Secretary of the Interior and the Commissioner of the General Land Office of the United States, to-wit, on the 24th day of January, 1903, made and executed their certain certificate whereby the land involved in this action was certified to the State of Iowa in trust for the Iowa Falls and Sioux City Railroad Company, which said certificate was duly filed for record in the office of the Recorder of Woodbury County on the 2nd day of February, 1903, and recorded in Book 54, Lands, page 114, of said office; that thereafter, on the 2nd day of February, A. D. 1903, the Governor of the State of Iowa in pursuance of Chapter 124 of Acts of the 12th General Assembly of said State, issued and delivered to the said Railroad Company
10 a patent of said lands, whereby the said title thereto was conveyed from the said State of Iowa to the said Iowa Falls & Sioux City Railroad Company and its assigns; which said patent was duly filed for record in the office of the Recorder of Woodbury County, Iowa, on the 10th day of February, A. D., 1903,and recorded on page 219 of Book 54, Lands, of said office.

Par. 2. That, by a previous conveyance made and executed on the 20th day of March, A. D., 1887, the said Iowa Falls & Sioux City Railroad Company sold and conveyed the aforesaid land and all lands to which it was entitled under said grant to the defendant, Iowa Rail Road Land Company, it being expressly recited in said conveyance "That the said bargain and sale according to its true intent and meaning includes not only the rights, interest and claims of lands granted by Congress afore mentioned and which have already been ascertained as a part of said land grant and certified as such and not already disposed of, but also and in addition thereto all the lands, interest and claims to land rightfully belonging to said grant which have not been definitely ascertained as grant lands and so certified, and to which said party of the first part (The Iowa Falls & Sioux City Railroad Company) may at any time hereafter become legally entitled. That said mentioned conveyance was duly filed and is of record in the office of the Recorder of Woodbury County, Iowa. That under and by virtue of said last mentioned conveyance the aforesaid certificate of the United States Land Office and the aforesaid patent of the Governor of Iowa enured to the benefit of this defendant, and the legal and equitable title and ownership of the aforesaid land became vested in this defendant. Defendant states that its aforesaid title and ownership is superior and paramount to any claim of title, ownership or interest in said land of plaintiff herein, and that this defendant is entitled to the immediate possession of said real estate.

11 Wherefore, this defendant prays that its title in and to said real estate be quieted as against the claims of plaintiff,

and that plaintiff be decreed and required by proper process of this Court to deliver possession of said real estate to this defendant; and the plaintiff, his grantees, assigns or servants be enjoined and restrained from entering upon said real estate or interfering with defendant's possession and title thereto, or from making any claim of any interest or ownership therein.

Duly verified.

On June 29, 1904, plaintiff filed in said cause his

Amendment to Reply

as follows:

Comes now the plaintiff herein and for amendment to his reply herein alleges and states:

That for more than ten years prior to the commencement of this suit the plaintiff and his immediate grantor have been in the open, notorious, exclusive, continuous, adverse possession of the real estate in controversy under claim if right and color of title and that plaintiff is now in possession of the same under the same claim of right and color of title.

Wherefore plaintiff prays as in his petition and further prays that the defendant's supplemental answer and counter claim be dismissed.

Said answer was duly verified.

On May 28, 1903, said cause came on for trial in said court before Hon. J. F. Oliver, presiding judge, whereupon the following evidence was introduced and the following proceedings had, viz:

12 *Plaintiff's Evidence.*

Plaintiff offers in evidence Exhibit "A" being a receipt from M. D. McHenry, receiver, dated Receiver's Office, Des Moines, Iowa, May 3, 1888, to John Carraher for nine dollars, being amount of fee and compensation of register and receiver for the entry of N. E. — of N. E. ¼, Section 1, Township 89, Range 46, under first Section of Act of Congress approved June 14, 1878.

It is agreed by the parties that all interrogatories and evidence shall be taken subject to objections as incompetent, immaterial, irrelevant and secondary or any other just legal objection thereto in any court to which this cause may be taken, and shall apply to direct and cross examinations.

Plaintiff read in evidence the deposition of R. W. CARRAHER, as follows: I live in Leeds, a suburb of Sioux City. I came to Woodbury county in 1871; I left here in September, 1894, and came back in 1898; during all the rest of the time I lived in this county. Since 1898 I lived in Hornick, Iowa, until 1901. Until September, 1904, I lived in Banner township, Section 6. I am a son of John Carraher. John Carraher died October 30, 1891.

I am acquainted with the N. E. ¼ of the N. E. ¼ of Section 1, 89–46, Woodbury county, Iowa. I have cultivated this land. I am not positive whether I cultivated it in 1890, but I cultivated it in

1891–2–3 and 4. I cultivated somewhere between 18 and 20 acres. Of the balance part was hay and a six or seven acres never was broke. I cut the hay during the time I cultivated it, for my father. I was at home then working with my father. Either Charlie Reid worked in 1890 or I did. About three acres of trees have been planted on it, in 1890, by my father and John Downey, and I think a man by the name of Parker helped. Those trees are growing now. Some may be dead. I think this land was broke in 1888; my father
13 broke the three acres where the trees are and Harrison broke about seventeen acres. I was present part of the time when Harrison broke the seventeen acres. He was employed by my father. It was cultivated in 1889 by C. I. Reid for my father, from whom he rented it. There was between eighteen and twenty acres. There was a place adjoining us on the north that had been broken up quite a while before, and they broke over the line about three acres on this forty; I think father paid for breaking seventeen acres there. That was in 1898. In 1889 on a portion of the land that was not broke they cut hay and a portion they never did anything with. I could not say positively whether Reid cut the hay that year or whether father and I did. My father claimed to own the land at the times I have mentioned. We had an eighty that joined it on the north but it was in Plymouth county. It was called the forty, the tree claim sometimes, and once the sandpit forty. There was a sandpit on it. There was no other sandpit in that neighborhood that I know of. My father deeded this forty to my nephew a short time before his death. He always talked just the same of that as he did of any of the rest of the land he owned there.

Cross-examination:

I think my father died the 30th of October, 1901. The nephew to whom he deeded the land was Claude Blumer, the plaintiff in this action. I could not tell you the date of the deed. I did not know of the circumstance of the tree claim entry being cancelled by the department. Lawyer Wakefield looked after it here in town. I knew he had a lawyer look after it but I never knew there was a contest former to my father's death. I am 33 years of age.

Plaintiff also read in evidence the deposition of D. E. KIRBY, as follows:

I live in Sioux City; lived here for 15 years. My occupation is loans, insurance. I have bought land at tax sales. That
14 has been part of my business. I bought at tax sale in 1895 in Woodbury County, Iowa, N. E. ¼ of N. E. ¼, Section 1-89-46. I have in my hand the tax certificate register in which we register all lands purchased by us at tax sales. I suppose we received a certificate for that land at that sale. On the margin here is marked, "Assigned to John Carraher."

Cross-examination:

I have no entry that shows whether the certificate was cancelled or redeemed or what became of it other than that we assigned

it to Carraher. It is in my own handwriting here but I do not remember anything further. I do not know whether any tax deed issued on it or not.

Redirect examination:

I do not know what was done with this certificate other than it must have been delivered to Mr. Carraher. Just the regular assignment that is on the back of the certificate. We never made any separate assignment on a separate piece of paper that I have a recollection of. There is a blank space on the back of the certificate to be filled out for the assignment of each certificate. Just what the records say here is all I have to go by.

Recross-examination:

I have no independent recollection about it all.

Redirect examination:

Our custom about making entries after disposal of a certificate which we had purchased was we usually put on the margin "Assigned—sold to such and such a person or party." In case it is redeemed we have a place it is marked redeemed. The certificate is delivered when it is assigned, not when redeemed.

Plaintiff also read in evidence the deposition of Mrs. HOPE BARNHOLTZ, as follows:

15 I live in Lincoln Township, Plymouth County; fifteen miles from here. I am a grand-daughter of the late John Carraher. I am acquainted with this forty acres in dispute in this case. It it situated in the N. E. ¼ of the N. E. ¼, in north-east part of Concord Township. It is the north-east forty of the township. My grandfather planted cotton-wood trees on it in 1890. I was small then and helped carry the trees along as he set them in. About three acres were planted then. The trees are growing now. R. W. Carraher and C. I. Reid farmed it the year the trees were planted.

Plaintiff also read the deposition of ELMER CALKINS as follows: I live in Leeds in this city. Have lived there two years. I came from there to testify in this case. Before moving to Leeds I lived on Mr. Carraher's place, in Section 6, Banner Township of this County. I have lived in Woodbury County about fifteen years except two years I was away. I have been acquainted with N. E. ¼ of the N. E. ¼ of Section 1, in Concord Township, this County, ever since I worked it in 1896. I raised oats on it that year; rented from Mr. John Carraher. Paid the rent to John Carraher. Share rent. Louis Rentle worked it in 1897. He is now in Winatchi, Wash. I saw Louis Rentle and John Carraher talk the bargain over in my house when I was living on the place. Mr. Carraher was living with me at the time. I worked it the year 1897. During the years 1896 and 1897 I heard a good many times Mr. Carraher speak of his owning the forty; he was there a good many

times when I worked it. I saw him there two or three times during the summer when Rentle was working it. He was there to see how he was working it I suppose, talking with Mr. Rentle. This was in the spring, in March, I believe I heard the talk between him and Rentle about renting it. Rentle raised a good fair crop
16 that year I think. He had corn on it. I don't know whether he had shares or cash rent. I think he delivered corn to Mr. Carraher. They claimed there was 22 acres under plow those two years. The rest was hay and there was a small grove. About two or three acres of cottonwood. The grove was in good shape then; trees all living and growing nice. Balance was most in hay—two or three acres of weeds. The year I had it I had the hay cut but I don't think it was cut the year Rentle had it.

Cross-examination:

I know nothing about Mr. Carraher's title, how he acquired title, or whether he had title to the land.

Plaintiff further read deposition of ALBERT WOLETT, as follows: I knew John Carraher one year when I worked some land of his in the northeast part of the township, in 1898. I don't know the name of the township it was in. We lived in Plymouth county. Never lived in this county. I think it was on the east end of the township. The line of the north end of it is the Plymouth county line. It is in the northeast corner in that township. We rented twenty acres from old man Carraher that year. Raised wheat on it. Had a written lease. I don't know what became of that. I could not tell who we paid the rent to. My brother said he was going to pay the old man the rent. It was in my brother's name. I worked for him that year. I did not cut the hay that year. We never cut it. Mr. Carraher said we should have the hay. I don't know whether he meant from that forty or his eighty; we had 100 acres rented from Carraher; there were trees on this forty; about three acres; there was a sand pit on it. When I talked with Mr. Carraher he let on he owned it. I live in Plymouth county, twenty miles from Sioux City.

ELMER CALKINS, re-called.

Redirect:

When I farmed this land in 1898 I did not have a written
17 lease; I paid the rent to Mr. Carraher. I cut the grass on this the year George Reid had the farm land.

Also the deposition of GEORGE REID: I live in Woodbury county about six miles east of Leeds and a mile north. About twelve miles from here. Have lived in this county two years. Before that I lived in Plymouth county. I knew John Carraher since 1899. I rented some land of him. It was the N. E. ¼ of the N. E. ¼. Section 1, Township 89, Range 46. In the northeast corner of the township. The northeast forty. I rented it of Carraher in

1899. I had only the tillable land rented; about twenty-two acres. I paid rent to Mr. Carraher. Cash rent. Mr. Calkins had the hay that year. He cut all the hay that was cut there that year. About three acres of the land is in cottonwood trees. I could not say the condition of the trees.

Mr. Carraher always claimed to own this land in my business relations with him that year. He did not say anything about claiming to own it. He spoke of it as his forty.

Cross-examination:

I rented about 20 or 22 acres. Raised corn on it. Cash rent something like $2 an acre. I just paid for the tillable land on that forty. I don't know what the hay land rented for.

Redirect:

I saw Mr. Carraher there during the year I worked it, two or three times. I saw him about the trees. He had his horse tied there and was in the grove. No one else came near me and made any claim to own the land.

Mr. CALKINS recalled.

Redirect:

I cut the hay on this land during 1899. I was to give Mr. Carraher a share of the hay. I did give him a share. That was in 1899. Mr. George Reid worked the tillable part that year. I lived in the next section to this land for five years and 18 then I was within three miles of it about fifteen years. During all that time this forty was generally known in that neighborhood as John Carraher's, all that I ever knew it to go by. I never heard of anyone else making any claim to it, or being in possession of it, cutting hay or raising any crop on it, or anything of that kind. Mr. Carraher lived in my house two years, 1896 and 1897. In 1898 he was on another place of his in Concord Township. In the same section as this forty. He was a widower. The year his wife died I moved onto this place in Banner Township, east of this forty, just cornered onto it. That was 1896. Lived there five years. During this time I saw Mr. Carraher on his forty a good many times. Other than times when I worked it. After I worked it a couple of times I was hauling sand from this forty and he was there. The last time I saw him was four years after I worked it; the last time I was on his place. Between the time I worked it and this last time I saw him there a good many different times. I knew of his selling sand to people. There was no other sand pit in that neighborhood that I knew of. The sand pit was nearest to the south. The trees were in the southeast corner. I know of four or five different persons who got sand there, of Mr. Carraher. Two of them I know went to the house when he was at my place and saw him about getting sand there. There are no bulidings on this forty. The tillable part of the land is on the north side. Runs pretty close to the west line. Grass

land is in south-west corner; same as the trees, on the south side; hay in the west part and trees in the east, on the south. The hay land extends in a three cornered piece in south-west corner.

Recross:

I worked the land one year, 1896. I got one-third share. It was wheat. The land ordinarily rented around $2.00 per acre.

Also the deposition of CLAUD BLUMER: I am the plain-
19 tiff in this cause. I am a grandson of John Carraher who died in 1901. I am the same person to whom a quit-claim deed of the land in controversy in this cause was conveyed by John Carraher October 26, 1901. That was about eight days before he died. I have been acquainted with this land for some time; that is I knew of it. I have cut grass on it during 1902, 1901, 1900. During 1900 and 1901 I rented it of my grandfather. I did not have a written lease. He gave me the hay off of it. I cut the hay. Bill Ried worked the tillable part of it during 1900. I am almost certain that he rented it of my grandfather. I know he paid the rent to my grandfather that year for my wife was teaching school up there and he told her to stop and get the rest of the rent. Otto Zeiglan worked the tillable part in 1901; he rented of my grandfather. He paid the rent to me; my grandfather gave me an order on Zeiglan to pay it to me. He paid it to me. Nick Stussin farmed it during 1902. He paid the rent to me. Exhibit "C" is the lease my grandfather made to Nick Stussin. Plaintiff offers Exhibits "B" and "C" in evidence: Exhibit "B" being a quit claim deed of date October 26, 1901, from John Carraher, (a widower) to Claude F. Blumer, for the consideration of five dollars to all of the N. E. ¼ of the N. E. ¼, Section 1, Township 89, Range 46 west of the 5th P. M., situated in Woodbury county, Iowa.

Exhibit "C" being a farm lease made and entered into September 21, 1901, between John Carraher, party of the first part and Nick Stussin, party of the second part, leasing to party of the second part all the cultivated land in the N. E. ¼ of the N. E. ¼ of Section 1, Concord township, Woodbury county, Iowa, containing twenty-one acres more or less, from September 21, 1901, to January 1, 1903, the second party agreeing to pay as rent for said premises $45.00 on or before the 1st day of September, 1902.

20 Defendant objects as incompetent, immaterial, irrelevant. During the time I have been acquainted with it my grandfather always claimed this was his forty. Said a good many times it was his forty. During the past ten or twelve years I have lived with my grandfather most of the time. That is only half a mile from the forty. In that neighborhood this land was called my grandfather's. About eighteen or twenty acres of it is cultivated but it run over the line a little; about twenty-two or twenty-two and a half acres broke up now. Rest of it is hay ground. About three acres of trees. I had the hay on the ground during the last three years. Before 1902 got it from my grandfather. He gave me the hay on it during 1900 and 1901. Previous years I remember Elmer

Calkins cutting the hay, in 1899. I am pretty sure he rented it from my grandfather. I know my grandfather had it cut two or three different times because I have helped haul hay from there. In 1892 or '3 or '4, something like that. I don't know of his cutting hay any years since then. For the year 1902 Uncle Matt paid the taxes and I paid him. Plaintiff offers in evidence exhibit "D" being tax receipt of Treasurer's Office, Woodbury county, Iowa, Sioux City, Iowa, Feb. 25, 1902, Received of Claud Blumer $9.72, N. E., N. E., 1, 86, 46; 33.95 acres, $9.72, Concord, J. A. Morgan, Jr., County Treasurer. Defendant objects as incompetent, immaterial, irrelevant. Plaintiff again offers Exhibit "A." Defendant objects as incompetent, immaterial, irrelevant.

And the deposition of CHARLES I. READ, as follows:

I live about 16 miles north-east of here in Plymouth County, lived there 14 years. I was acquainted with John Carraher who died in the fall of 1901. I rented land of him every year since I have been here until he died. I rented the N. E. ¼ of the N. E. ¼, Section 1, Concord Township, in 1890 and 1891 for myself and in 1895 I rented it for my brother. I cultivated it in 1890; on the
21 forty there is something like 20 acres cultivated. Raised flax on it that year. That year I paid the rent to the old gentleman, Mr. Carraher. I think Mr. Carraher cut the grass in 1890. I think the trees were planted that year. In 1891 I cultivated the same amount as the year before. I think the Carrahers cut the grass that year. In 1891 I paid the rent to Mr. Carraher. In 1895 I rented this same land of Mr. Carraher; oral lease. My brother worked it that year. I rented it for him. That year my brother cultivated about 18 or 20 acres. My brother cut the hay in 1895. I rented all of it that year including the hay land. My brother paid the rent to Mr. Carraher. I saw that it was done. I think about three acres of that land is in trees. I have seen the trees lately. They were in very good condition and taken care of when I saw them. I lived two miles from this forty. I knew of Mr. Carraher cultivating the trees those years. I saw the trees this last fall and they were in good condition. Cottonwood trees. Mr. Carraher claimed this forty really, and hired it broke. I know the man that broke it, and Mr. Carraher hired him. I did not see the contract but I heard it talked over afterwards, that Mr. Carraher hired this man to break the land. It was broke somewhere along 1888 or 1889. During the years I rented it I saw Mr. Carraher on the land, cultivating the trees one time, working there. He was over there every once in a while when I was on the land taking care of the crops. I know of his being there when other people were cultivating it. About the same frequency I suppose. During the past ten years Mr. Carraher claimed to be the owner of it. I never heard of any one else claiming to own it or exercising any ownership of it.

Cross-examination:

In 1890 and 1891 I rented the land; 1890 was cash rent. I think about $2.00 an acre, for the cultivated land. About 20 acres. The

year I rented it for my brother he got the hay land in; the
22 two years I farmed it myself Mr. Carraher cut the hay on that land. In 1895 I rented it for my brother, Joe Reid. He is not here. Mr. Carraher had quite a bit of land in that neighborhood; besides this piece I rented land of him in Plymouth County. 240 acres there he rented to me. He also owned a large amount of land in Woodbury County. I live about 16 miles from Sioux City, in Plymouth County.

Plaintiff also read the deposition of W. R. REID, as follows:

I live sixteen miles north-east of here in Plymouth County; have lived there 11 years; before that I lived in the south part of the state. I knew John Carraher when he was living. I rented land of him. I don't know of any in particular only 1900; that year I rented 40 acres of tree claim right back of Downey; I think it is Banner Township. I am not certain. No, I don't know what township. It is to the north side of the Township and joins Plymouth County. I had a lease of this forty. Exhibit "H" is the lease I had of John Carraher during the year 1900. That included a forty in Woodbury County. I knew that forty as a tree claim. About 20 or 22 acres in that forty cultivated, north and east corner like, more on the north side; run down almost full length onto the west. Probably two acres of cottonwood trees on the south-east corner; about 18 acres of grass land. This is the same forty my brother, George Reid, worked the year before I did. My brother Charles worked it about the time I came here; I could not tell what years. Exhibit "H" is the lease I received from John Carraher. I farmed it in wheat that year. Paid rent to John Carraher. I think Claud Blumer cut the grass that year. John Carraher claimed to own the land the year I worked it. He claimed to me to own it. I never heard any one else making any claim to it.

Plaintiff offers Exhibit "H" in evidence. Defendant objects as incompetent, immaterial, irrelevant.

I made the lease at the time of year it bears date.

23 OTTO ZEIGLAN: I was acquainted with John Carraher during his lifetime. I had known him about 5 years. At present I live about 18 miles from here, in Plymouth county. Came here today to give my testimony. I rented some land of John Carraher the year he died; I think that was 1901. I rented the plow land in the forty in the north-east corner of Concord Township. I raised a pretty fair crop of corn that year. I paid the rent to Claude Blumer. The old gentleman was sick and he wrote an order for me to pay Claude. I rented it in the spring of 1901, from John Carraher. I think Mr. Blumer cut the hay on the forty that year but am not positive. There were anyway two acres of cottonwood trees on this forty. They were in good condition in 1901. I do not know when they were planted. I could not say how old they appear to be. At the time I rented the land I supposed Mr. Carraher owned it. He did not say who owned it. He called it his land. At that time I lived about a mile from it. I think the general reputation was that

Mr. Carraher was the owner of the land at that time. I never heard anyone else making claim of ownership to it. I have known the land for abut five years. I lived in that neighborhood the last nine years. I moved where I now live this winter.

CLAUDE F. BLUMER, recalled: I know of Otto Zeiglan working this land in controversy in 1901; Nick Stussin in 1902; it was the same land the other witnesses have testified about.

Also the deposition of CHARLES N. MARTIN: I live in Sioux City; am deputy county treasurer; have been since 1894. I yesterday examined the books and records of my office with reference to the assessment and payment of taxes to N. E. ¼ of N. E ¼ of Section 1, Township 89, Range 46 in this county.

Q. In whose name was it taxed in 1895?

A. Taxed unknown. During that year the taxes were paid in the name of John Carraher. 1896 to 1901 inclusive this land
24 was taxed in the name of John Carraher. The same years the taxes were paid in the same name. In 1902 the same land was taxed in name of Claude F. Blumer. Taxes for 1902 have not been paid. They were just due the first day of January and have not yet been paid. My examination did not go further back than 1895.

Testimony Taken at May Term, 1903.

CLAUDE F. BLUMER duly sworn testified: I am plaintiff in this case. I am the same Claude Blumer who testified by deposition and whose deposition is offered in evidence. I heard the deposition of Albert Wollet at the time of taking his deposition, in regard to working or renting some land of John Carraher for year 1898. I know about his working that land that year. He paid the rent to my grandfather, John Carraher, that year. I was present when he paid it to him. It was the same year, after he had his crop. Late in the fall of 1898. I know it was on the land in controversy. I have paid taxes on this land in controversy for the year 1902.

Plaintiff offers in evidence Exhibit "I," being a tax receipt for the year 1902 from J. A. Morgan, Jr., County Treasurer Woodbury County, Iowa, to Claude F. Blumer, $7.92 taxes, N. E., N. E., 1-89-46, dated March 20, 1903.

Defendant objects as immaterial, irrelevant, incompetent.

Q. Do you know the number of trees that are now standing and growing on the land in controversy?

Defendant objects as incompetent, immaterial, irrelevant.

A. There are over twenty-three thousand. 260 in length and 80 in width. In another patch there must be about two or three hundred. Exhibit "A" was found amongst my grandfather's papers after his death, and was given to me. I testified I had received my deed before his death; and this was among his papers at the time of his death.

25 Cross-examination:

Those trees were planted by my grandfather in 1888 and 1889. I think a few of them were planted a year later, in 1890.

GEO. W. WAKEFIELD, being duly sworn, testified: I am one of the judges of this Judicial District. I knew John Carraher, formerly of this county in his lifetime. I took some part in some correspondence for him in regard to a timber culture entry in this county for land in this county. Exhibit "J" recalls to me correspondence I conducted for him. From the contents of the letter I am quite certain I received for him from the receiver of the land office at Des Moines, Iowa, a timber culture entry receiver's receipt number 607, for the N. E. ¼ of the N. E. ¼, section 18, township 91, range 46, in May or June, 1888. This letter, Exhibit "A," was written by me and sent to John Carraher. That receiver's receipt referred to therein was enclosed in this letter.

Plaintiff offers in evidence Exhibit "J," as follows:

SIOUX CITY, IOWA, *June* 2, 1888.

Mr. John Carraher.

MY DEAR SIR: I have the pleasure of handing you herewith your timber culture entry Receiver's receipt No. 607 for N. E. ¼ of N. E. ¼, 1, 89, 46.

Respectfully, GEO. W. WAKEFIELD.

P. S.—You can take possession and proceed to comply with the timber culture laws.

Cross-examination:

I was not in general practice at the time that letter was written. Mr. Carraher had talked with me something about the matter before, while I was in general practice, in a general way. I wrote several letters for him before I went on the bench and the department having my name would send letters to me.

26 My present impression is this came to me in part because of that fact. I did not appear before the department about the subsequent cancellation after I went on the bench other than as things may have come to me and I passed them on to Mr. Carraher. Mr. Carraher once or twice spoke to me in a general way about the progress of it.

Q. You knew there was a contest in progress over the entry then?

A. As to the exact situation I do not know. I knew there was some questions. I recall there was some matters that he talked to me about, and reported to me something about the matter, whether before this letter was received or later I would not be able to state. It related to securing an entry upon the land. Whether he had a right to make it before, if he had not made it, I don't know as to that. I had known Mr. Carraher since the seventies sometime. He owned a half section of land, or something in that neighborhood, out there. He was a man of a good deal of natural intelligence. I think

he had a quick grasp of anything that related to his interests; a reasonably intelligent farmer. I do not remember about a prior entry by Mr. Carraher of this land as a timber claim. I think probably I knew something about the history of it.

Redirect examination:

When I say Mr. Carraher was possessed of about half a section of land I do not fix any particular date.

Cross-examination:

Q. The depositions say that he owned 1000 acres at the time of his death?

A. The time I was speaking about was earlier than any of these. I knew about that. I think there was a letter stating the application had been mislaid, and I forwarded another.

Plaintiff offers in evidence Exhibit "K;" said Exhibit "K" shows
the location of Sioux City & Pacific Railroad to extend diago-
27 nal through Section 1 in question entering said section near
the northeast corner and leaving the same near the northwest corner thereof. Defendant objects as incompetent, immaterial and irrelevant.

Admission.

It is stipulated and agreed that the line of road referred to in the pleadings in this case was completed in accordance with the Acts of Congress and the Legislature of Iowa by the first day of January, 1872, and that the said road is now operated by the Illinois Central Railroad Company.

Defendant, however, does not admit that the final location of the road was in accordance with Exhibit "K."

J. S. McSPARREN, duly sworn, testified: My name is J. S. McSparren; I am deputy county auditor in this county. Have held that position six or seven years, continuously. I have charge of the maps and other documents filed in the office of the county auditor by railroad companies, as required by the Acts of the Legislature of the State of Iowa. I have in my possession a map of the line of railroad of the Illinois Central Railroad Company in Woodbury County, Iowa, filed by said road in the office of the county auditor in accordance with section 1337 of the Code of Iowa. (Produced and marked Exhibit "L."). Plaintiff offers in evidence Exhibit "L." Defendant objects as incompetent, immaterial, irrelevant. This came to us through the mail from J. C. Welling, president of the Illinois Central Railroad Co. and the Dubuque & Sioux City Railroad.

Plaintiff rests.

Defendant's Testimony.

Defendant offers and reads in evidence deposition of Samuel S. Burdett, as follows:

28 My name is Samuel S. Burdett; age 67 years. Profession, attorney at law, having an office at Washington, D. C. I have

been, and continue to be an attorney for the defendant, Iowa Railroad Land Company; that relation began early in 1888 as to some matters, and as to the land grant involved in this suit began in the month of June, 1888. My own and my firm's special duties and employment have been to forward the interests of Iowa Railroad Land Company in all matters pending before the Commissioner of the General Land Office and Secretary of the Interior.

I was Commissioner of the General Land Office during the years 1875 and 1876. I have attached as Exhibit "A" to my deposition copies duly certified under the seal of the General Land Office, of the original documents relating to the N. E. ¼ of the N. E. ¼, section one, township 89, range 43, Woodbury County, Iowa, showing the cause of delay in the Land Office incurred by defendant in procuring said title to be certified. It appears from the proper records that the defendant and its predecessors in interest under the grant, in December, 1858, procured the listing, under the regulations then in force in the Land Department, of the whole of section 1, township 89, range 46, Iowa, for the benefit of the Dubuque & Pacific, afterwards the Iowa Falls & Sioux City Railroad grant, under Act of Congress passed May 15, 1856, the land in said section being, by said list, certified to the state of Iowa, under said grant.

Afterwards, on February 21, 1859, the State of Iowa selected the east half of said section under the Swamp Land Grant, thus conflicting with the aforesaid certified list. Under the order of the Secretary of the Interior, dated February 28, 1859, because of said conflict the said east half of said Section 1 was stricken out of said certified list,
with a view to determining whether it passed to the state under
29 the Swamp Land Grant. These facts are learned from an inspection of the records of the General Land Office. Document No. 7, the letter of Commissioner McFarland, on page two, recites the fact that the records show that the tract in dispute was selected as swamp in February, 1859, and that the claim of the state under said selection was finally rejected February 16, 1878. It also says: "It was also selected under the railroad grant, but was not included in the lists approved to the State because of conflict with the swamp claim."

Said letter (Document No. 7) also shows that John Carraher made application to the local land office at Des Moines, Iowa, to make timber culture entry of the N. E. ¼ of the N. E. ¼ of Section 1, Township 89, Range 46, and that his application was rejected by these officers, Carraher appealing from their action. The dates of Carraher's application and rejection and of his appeal are not given, but an inspection of the record on file in the General Land Office shows that said application was filed on October 2, 1883, that it was rejected on October 30, 1883, for conflict with the railroad grant, and that Carraher's appeal was filed November 24, 1883; and disposed of December 3, 1883, by the Commissioner affirming the action of the local officers. Thereupon Carraher appealed to the Secretary of the Interior, which appeal was submitted to the Secretary on August 25, 1887. Pending Carraher's appeal the Iowa Falls & Sioux City Ry. Co. on April 24, 1885, filed a list of selections in

the local office at Des Moines, embracing the said N. E. ¼ of the N. E. ¼ of Section 1, in question, as inuring to it under said grant of 1856, which list was accepted by the Register and Receiver and by them certified to the Commissioner of the General Land Office under date May 13, 1885.

Under the rules and practice of the Land Department, then and ever since prevailing, an appeal to the Secretary of the In-
30 terior from a decision of the General Land Office affecting the title to a tract of the public lands operated as a supersedeas divesting the General Land Office of all authority to dispose of such tracts until the Secretary shall have finally disposed of the appeal. The pendency of the appeal of Carraher before the Secretary of the Interior, therefore, prevented any action in the General Land Office upon the said selection of the tract applied for by Carraher. The Secretary reached a decision in the case on June 17, 1891. (See document No. 6.)

One of Carraher's contentions was that the grant in question had been adjudicated in 1863 and fully satisfied. The long delay in the Secretary's office was in part caused by this contention. In the meantime the final adjustment of the grant was in process of adjudication, and was only announced on April 9th, 1891. The adjustment then approved by the Secretary, which found a considerable quantity of land still due under the grant, is evidenced by the letter of the Secretary of the Interior to the Commissioner of the General Land Office dated April 9th, 1891, which is published in Volume 12 of the decisions of the Department of the Interior relating to public lands at page 347.

On June 17, 1891, the Secretary's decision adverse to Carraher's application was announced. In the meantime, as appears by the Commissioner's letter of July 11th, 1891, Document No. 5, Carraher had been allowed by the Register and Receiver, without authority, to make timber culture entry No. 607 of the N. E. ¼ of the N. E. ¼ of Section 1 in question under date May 31st 1888. The Commissioner in said letter which promulgated the Secretary's decision of June 17, 1891, and finally rejected the application of Carraher to make timber culture entry, filed October 2, 1883, also directed the cancellation of his said timber culture entry on the ground that it had been allowed without authority.

On July 15, 1891, my firm advised the Iowa Railroad
31 Land Company of the Commissioner's action of July 11, 1891, in which the Carraher entry had been cancelled and received in reply, the letter thereto attached and marked Exhibit "B" from P. E. Hall, president, dated July 28, 1891, in which he asked that we "take such steps as will result in the tract in question being certified to the State for our benefit."

Thereafter, by personal application by myself and other members of my firm, effort was made to secure the due certification of the land under the grant, resulting in a promise from the proper officials of the General Land Office given on or about October 1, 1891, that the tract would be included in a patent which was then about to be prepared. I find that my firm, on the 1st day of October, 1891,

addressed a letter to P. E. Hall, president of the company, advising him of the said promise; a copy of said letter is hereto attached and marked Exhibit "C."

The duty of certifying the tract rested with the proper officials of the General Land Office, and was in fact a mere clerical duty. No rule required the filing of an application in writing for the certification of lands embraced in a pending selection, and the practice of my firm in such matters was to urge, by personal request, the proper officials of the General Land Office to take up such lists and prepare the necessary certificate for the action of the Commissioner and Secretary. This was what was done with respect to the tract in question here, and our requests in the matter resulted in the promise that the land would be included in a patent such as set out in my firm's letter of that date to P. E. Hall, President, Exhibit "C." In the multitude of business transacted by my firm in the years succeeding the action referred to, it is impossible for me to recollect the details of this particular matter, nor do I recollect the circumstances under which the promise referred to in said letter was given, but that it
32 was made to me or to some member of my firm as a result of urgent requests for proper action, is certain, or the said letter of my firm, of October 1, 1891, Exhibit "C," would not have been written. It was the practice of my firm in all matters in our hands from time to time to call them up by personal application, with a view to securing action. When the certification finally issued on January 22, 1903, it was in response to a personal and urgent request from my firm.

I know of no delay whatever caused by either the Iowa Railroad Land Company or its predecessors in interest, or by any of its agents or attorneys, and certainly none by myself or my firm in securing the final issuance of title by the United States to the tract of land in question. The delay in certifying the said land, after the Secretary's action of June 17, 1891, was wholly due to the want of action by the General Land Office, the Company and its agents having performed every duty in timely manner required by the rules of the Department.

The first cause of delay in final certification of said tract under the aforesaid railroad grant of May 15, 1856, was the selection by the state of Iowa under the swamp land grant of 1850 which was filed February 21, 1859, and embraced said tract, which selection was not finally disposed of by the Land Department until 1878.

The next cause of delay was the appeal of John Carraher from the decision of the Commissioner of the General Land Office dated December 3, 1883, which held for rejection the application of said Carraher filed October 2, 1883, to make entry of said tract under the provision of the timber culture law. Delay was next caused by the loss of Carraher's application papers in the General Land Office, which is mentioned in the letter of the Commissioner to Mr. Van Deventer dated September 6, 1887, Doc. No. 1 of this deposition, and in that of the Commissioner to Geo. W. Wakefield, Esq., Doc.
33 No. 4 of this deposition. The Next cause of delay appears to have grown out of the contention made in behalf of Carra-

her in support of his appeal, that the railroad grant had been fully satisfied, and that this tract was not needed to fill up the quota of lands due under the grant. This made necessary the adjustment of the grant which took place on April 9, 1891, as already detailed.

Thereafter the Secretary disposed of Carraher's appeal on June 17, 1891. The delay in certifying the land under the grant which subsequently ensued, occurred in the General Land Office. As to the causes of this last delay I have no certain knowledge, but I can state it as a fact, that between the date of the Secretary's final decision on the Carraher application, down to a very recent date, the railroad division of the General Land Office has been overburdened with work consequent upon the duty of adjusting all of the railroad land grants made by Congress in aid of railroads, which was cast upon the Land Department by the provisions of the Act of March 3, 1887, 24 Stats. at Large p. 556. For most of the time during that period the force of clerks in that division was insufficient to promptly perform the necessary labor attendant upon such adjustments and the conveyance of lands under the grants. The Delay in certifying the tract in question may have been due to these conditions.

The documents referred to by me in this interrogatory have been attached as Exhibit "A."

Attached to the deposition of Samuel S. Burdett, as Exhibit "A" thereof, were the following documents, duly authenticated, as true and literal exemplifications from the originals on file and of record in the General Land Office under date of April 23, 1903, which said documents were read in evidence on behalf of defendant, as follows:

Letter of Acting Commissioner.

34 "WASHINGTON, D. C., *Sept.* 6, 1887.

J. Van Deventer, Esq., Cedar Rapids, Iowa.

SIR: I am in receipt of your letter of the 27th ult., relative to the case of John Carraher *vs.* Iowa Falls & Sioux City R. R. Co., involving the N. E. ¼ N. E. ¼, Sec. 1, T. 89, R. 46, Des Moines, Iowa, requesting to know the ground upon which Carraher's appeal from office decision of Dec. 3, 1883, was allowed. In reply I have to advise you that the appeal referred to was filed within the sixty days allowed for that purpose, but was mislaid, and the papers in the case were not, therefore, submitted for the consideration of the Hon. Secretary of the Interior until the 25th ult. Enclosed herewith, please find copy of the Rules of Practice.

Very respectfully, S. M. STOCKSLAGER,
Acting Commissioner."

Letter of J. Van Deventer.

"OFFICE OF THE IOWA RAILROAD LAND COMPANY,
CEDAR RAPIDS, IOWA, *Aug.* 27, 1887.

Hon. Wm. A. J. Parks, Commissioner of the Gen. Land Office, Washington, D. C.

DEAR SIR: I am in receipt of communication "letter F" No. 6–5006 of date 25th inst., referring to office decision of December 3rd, 1883, in case of John Carraher *vs.* Iowa Falls & Sioux City Railroad Company, wherein Carraher's application to enter under the timber culture laws N. E. ¼ N. E. ¼ of Sec. 1, T. 89 N., Range 46, Des Moines, Iowa, was rejected; and also advising me that the Assistant Commissioner of the General Land Office (Hon. S. M. Stockslager) had submitted on the 25th the papers in the case on appeal by Carraher to the Secretary of the Interior for his examination. The Iowa Railroad Land Company now holds all the interest of the Iowa Falls & Sioux City Railroad Company to the tract in
35 question as well as to all the other lands yet to inure under the grant, and I have therefore to request that I may be furnished with a copy of the appeal papers in this case and be advised within what time we must answer the appeal under the rules of the Department. I also desire to know the ground upon which the appeal is now allowed as by reference to the decision of Dec. 3rd, 1883, you will notice that 60 days was allowed for that purpose, which period elapsed more than three and one-half years ago and in the interim without knowledge of the action of the Department the interest of the Iowa Falls & Sioux City Railroad Company was purchased for a valuable consideration by the Iowa Railroad Land Company.

Very truly yours, J. VAN DEVENTER, *Pres't.*"

Letter of Acting Commissioner.

"WASHINGTON, D. C., *Aug.* 25, 1887.

J. Van Deventer, Esq., Cedar Rapids, Iowa.

SIR: Referring to office decision of Dec. 3, 1883, in the case of John Carraher *vs.* Iowa Falls & Sioux City R. R. Co., wherein Carraher's application to enter, under the timber culture laws, the N. E. ¼ N. E. ¼, Sec. 1, T. 89, R. 46, Des Moines, Iowa, was rejected, I have to advise you that I have this day submitted the papers in the case, on appeal by Carraher, to the Hon. Secretary of the Interior for his consideration.

Very respectfully, S. M. STOCKSLAGER,
Acting Commissioner."

Letter of T. H. Carter.

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 11, 1891.

Register and Receiver, Des Moines, Iowa.

SIRS: I enclose herewith a copy of the decision of the Secretary of the Interior of the 17th ultimo, wherein he affirms application of John Carraher to make timber culture entry of the N. E. ¼ N. E. ¼ Sec. 1, T. 89 N., R. 46 W. The application of Carraher is therefore finally rejected and the case closed. It appears that on May 31, 1888, more than three years after the rejection of his application, and while his case was pending before the Secretary of the Interior on appeal, your office allowed Carraher to make timber culture entry 607 of the land. The action was without authority and the entry has this day been cancelled.

36

Respectfully,

T. H. CARTER,
Commissioner."

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *June* 17, 1891.

John Carraher *vs.* Iowa Falls & Sioux City Railroad Co.

The Commissioner of the General Land Office.

SIR: By letter of December 3, 1883, your office affirmed the action of the local office in rejecting the application of John Carraher to make timber culture entry for the N. E. ¼ N. E. ¼, Sec. 1, T. 89, R. 46 W., Des Moines, Iowa, for the reason that said tract had passed to the Iowa Falls & Sioux City, formerly Dubuque & Pacific, Railway Company, under the grant of May 15, 1856. (11 Stats., 9.) Carraher appealed alleging that said tract was excepted from said grant by a certain swamp selection, and further that said grant had been adjudicated in 1863, and fully satisfied, and that therefore said tract could not now be certified for said company. The tract is within the place limits of the grant to said company, the right of which attached on definite location on October 13, 1856. The tract was not selected as swamp land until February 21, 1859, and the selection was rejected on February 26, 1878. It does not appear that any adverse claim existed at date of definite location of the road and the tract consequently passed to the company under its grant.

This being so, th Department is without authority to dispose of it to another. If the Department has certified an excess of lands for the company, that fact might furnish a basis for suit to recover the title to such excess, but would not authorize the disposition to a stranger of a tract, the title to which passed by said act. On the contrary, however, it appears by a report of the Commissioner of the General Land Office, dated September 23, 1889, submitting to the Department an adjustment of the grant for said Dubuque & Pacific Railroad, that there is due as indemnity to said

37

company a balance of 51,824.81 acres on the main line, and 21,102.95 acres on the branch. Dubuque & Pacific R. R. Co. (12 L. D., 347). Said decision is accordingly affirmed. Herewith are returned the papers.

Very respectfully, GEO. CHANDLER,
Acting Secretary."

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Dec.* 3, 1883.

Register and Receiver, Des Moines, Iowa.

GENTLEMEN: I have considered the appeal of John Carraher from your decision rejecting his application to enter under the timber culture law, the N. E. ¼, N. E. ¼, 1-89-46, W. The tract is within the six mile or primary limits of the grant to the state by Act of May 15, 1856 (11 Stats. 6) for the Dubuque & Sioux City Railroad. The right of the road under said grant has heretofore been held to have attached from date of survey in the field. The line of the road opposite the track now in question was surveyed July 7, 1856. The United States Supreme Court, however, in the case Van Wyck *vs.* Knevals (16 Otto 360) held that the right of the state of Kansas under a similar railroad grant, attached when the route of the road was definitely fixed, beyond the power of change by the railroad company, so as to affect the grant, and that this was not done until the route had been adopted by the company
38 and a map designating it had been filed with and accepted by the Secretary of the Interior. The Dubuque & Pacific railroad company filed in this department a map showing the general location of its road, on October 11, and the same was accepted by letter of October 13, 1856. Said map has since been used as a basis for the adjustment of the grant, and the right of the state and the company will, accordingly, hereafter, be held to have attached along the entire road, October 13, 1856. The records show that the tract in dispute was selected as swamp February 21, 1859, and that the claim of the state under said selection was finally rejected on February 26, 1878. It was, also, selected under the railroad grant but was not included in the lists approved to the state because of conflict with the swamp claim. The tract is, also, within the ten mile limits of the grant of the state by act of May 12, 1864 (13 Stats., 72), for the Sioux City & St. Paul Railroad Company, but said company's claim was rejected October 2, 1879, but it took no appeal.

As shown by the facts above recited the tract was vacant public land, at the date the grant for the Dubuque & Pacific Railroad Company took effect, October 13, 1856, and it passed thereunder. It is not subject to appropriation under the laws of the United States, and the application of Carraher is therefore rejected, subject to appeal within sixty days. You will so advise him. The attorney for the railroad company will be advised by this office.

Very respectfully, N. C. McFARLAND,
Commissioner."

Attached to the deposition of Samuel S. Burdett, as Exhibit "B" thereof was the following:

"CEDAR RAPIDS, IOWA, *July* 28, 1891.

Messrs. Curtis & Burdett, P. O. Box 396, Washington, D. C.

GENTLEMEN: Referring to yours of July 15, 1891, in
39 which you advise that the timber culture entry of John Carraher for the N. E. ¼ N. E. ¼, Sec. 1, Twp. 89, R. 46, Iowa, has been cancelled by the Secretary of the Interior on account of conflict with the grant to the state of Iowa for the benefit of the Dubuque & Pacific R'y (now Iowa Falls & Sioux City Railroad), I have to say that this tract was selected by the Iowa Falls & Sioux City R. R. Co. as indemnity January 19, 1884, and again April 24, 1885. As this grant has been adjusted and shows more lands due to the state under the grant, I will thank you to take such steps as will result in the tract in question being certified to the state for our benefit.

Very truly yours, P. E. HALL,
President."

Attached to the deposition of Samuel S. Burdett, as Exhibit "C" thereof, was the following:

WASHINGTON, D. C., *October* 1, 1891.

P. E. Hall, Cedar Rapids, Iowa.

DEAR SIR: Referring to your letter of July 28th last concerning the timber culture entry of John Carraher for N. E. ¼ N. E. ¼ of Section 1, 89, 46, we have now to inform you that we are promised the tract will be included in a patent under the Railroad grant, which is about to be prepared.

Yours truly, CURTIS & BURDETT."

Attached to said deposition of Samuel S. Burdett, as a part of Exhibit "A," was a supplemental selection of lands by the Iowa Falls & Sioux City Railroad Company as follows:

"United States Land Office, Des Moines, Iowa. The Iowa Falls & Sioux City Railroad supplemental list of lands selected under and by virtue of an act of congress entitled, 'An Act Making a Grant of Lands to the State of Iowa to aid in the Construction of certain Railroads in said State, approved May 15, 1856,' and an act of
40 Congress approved March 2, 1868, extending the time for the completion of the Dubuque & Sioux City Railroad Company, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it and to which it is entitled under and by virtue of the grant and provisions of said acts of Congress, and the location of the line of route of the railroad of said Company, the selection being particularly described as follows: 'N. E. ¼ N. E. ¼, 1-89-46,' and other lands aggregating 73.54."

The said selection was endorsed "Noted in Selection Docket, page

55." Attached thereto was the affidavit of N. D. Parkhurst, to the effect that he was the land agent of the Iowa Falls & Sioux City Railroad Company; that the foregoing list of lands is the correct list of lands claimed by said Company as inuring to it in the construction of the railroad from Iowa Falls to Sioux City for which grant of lands was made by the act of Congress approved May 15, 1856, and an act of Congress approved March 2, 1868; said lands are vacant, unappropriated, and are not interdicted, mineral or reserve lands, and are of the character contemplated by the grant, being within the limits of said grant. Said affidavit was duly sworn to before a Notary Public July 22, 1885.

Attached to said selection is also the certificate of F. G. Clark, Register, and H. H. Griffiths, Receiver, of the United States Land Office, Des Moines, Iowa, under date May 13, 1885, that they have carefully and accurately examined said list of lands and tested the accuracy by plats and records of their office and find the same correct, and certify that the filing of said list is allowed and approved; that said lands are surveyed public lands of the United States within the twenty-mile limit on each side of the route of said railroad; that no part thereof is returned or denominated mineral lands, nor
41 claimed as swamp land, nor is there any homestead redemption, state, or other valid claim to any portion of said lands on file or recorded in this office; that the fees allowed by law for the selection have been paid, and that the full amount of lands so selected aggregate 73.54 acres.

Attached to said deposition as a further part of said Exhibit "A" was the following letter,—

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 9, 1886.

Geo. W. Wakefield, Esq., Sioux City, Iowa.

SIR: In reply to your letter of April 23rd ult., you are advised that the original application papers of John Carraher dated November 24, 1883, have been mislaid and after diligent search can not be found. If you will forward a new application to take the place of the original, immediately upon its receipt proper action will be taken upon Carraher's appeal.

Very respectfully, S. M. STOCKSLAGER,
Ass't Commissioner."

And the letters and documents attached to the deposition of Samuel S. Burdett as Exhibit "A" thereof are certified and authenticated under date of April 23, 1903, by J. H. Fimple, Acting Commissioner of the General Land Office of the United States under seal of office as copies of letters and papers relating to the selection of the N. E., N. E., Section 1, T. 89 N., R. 46 W. 5th P. M., Iowa, by the Iowa Falls & Sioux City Railroad Company, and the application of John Carraher to make timber culture entry of said tract, and as true and literal exemplifications from the originals on file and of record in this office.

The defendant further introduced as Exhibit No. 1 a certified copy of certified list No. 48, certified by the Land Commis-
42 sioner of the United States, Binger Hermann, under date of January 20, 1903, approved by E. A. Hitchcock, Secretary of the Interior, January 22, 1903. Said list is entitled: "Iowa Falls & Sioux City Railroad List No. 48; list of lands in the district of lands subject to sale at Des Moines within the six mile limits granted to the State of Iowa by the Act of Congress approved the 15th day of May, 1856, entitled 'An Act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said state, being the vacant and unappropriated lands in the alternate sections designated by off numbers for six sections in width on each side of the railroad in the City of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road; said list consists solely of N. E., N. E., Section 1, Township 89, N., Range 46 W., amounting to 33.54 acres."

Attached to said list are the following certificates:

"N. E. ¼, N. E. ¼, Section 1, Twp. 89 N., Range 46 W., 33.54 acres.

RAILROAD DIVISION, *January* 10, 1903.

We hereby certify that we have examined the foregoing list in connection with the plats and records of this office and have found the tract therein described to fall within the primary limits of the grant to aid in the construction of the Iowa Falls & Sioux City Railroad and to be free from adverse claims and subject to approval to said company under the Act of May 15, 1856.

F. C. LORD,
R. J. McELROY,
Examiners.

Approved:
S. S. MARR,
Chief of Division.

MINERAL DIVISION, *January* 15, 1903.

This certifies that the tracts selected herein are not within
43 six miles of mining claims of record in this office.

C. A. HILLINGSWORTH, *Examiner.*

Approved:
H. G. POTTER,
Chief of Division."

GENERAL LAND OFFICE,
DIVISION OF SWAMP LANDS.
WASHINGTON, D. C., *January* 17, 1903.

This certifies that the foregoing list, List No. 48, Iowa Falls & Sioux City Railroad Company lands, embracing 33.54 acres, has been

carefully examined in connection with the swamp land records of this office, and that the same has been found to be free from conflict.

SAM'L W. SNOW, *Examiner.*

Approved:

EDMUND MALLET,
Chief of Division."

"GENERAL LAND OFFICE, *January* 20, 1903.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the foregoing on page one is a true and correct list of a tract of land within the six mile limits granted to the State of Iowa by the Act of Congress approved the fifteenth day of May, 1856, entitled 'An Act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State,' being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad, 'from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road,' known as the Iowa Falls & Sioux City Railroad, containing thirty-three acres and fifty-four hundredths of an acre, within the State of Iowa, and they are now submitted for the approval of the
44 Secretary of the Interior in accordance with the requirements of said Act of May 15, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the Seal of the General Land Office to be affixed at the city of Washington on the day and year first herein written.

[SEAL.] BINGER HERMANN,
S. S. M., *Commissioner.*

J. I. P. Department of the Interior, Washington, D. C., January 22, 1903.

Approved subject to the conditions and rights above mentioned, covering thirty-three acres and fifty-four hundredths of an acre.

E. A. HITCHCOCK, *Secretary.*"

Said certificate is endorsed:

"STATE OF IOWA, *Woodbury County, ss:*

Entered for taxation this 2nd day of February, 1903.

N. JENNESS, *Auditor.*
W. L. EGAN, *Deputy.*"

"STATE OF IOWA, *Woodbury County, ss:*

Filed for record this 2nd day of February, 1903, at 4:00 o'clock p. m. Recorded in Book 54 Land, page 214.

H. S. BECKER, *Recorder.*
C. A. OLESON, *Deputy.*"

Defendant also offered in evidence as Exhibit No. 2 a patent from the State of Iowa to the Iowa Falls & Sioux City Railroad Company, as follows:

EXHIBIT 2.

The State of Iowa to all to whom these presents shall come, Greeting:

45 Whereas, Chapter 124 of the Acts of the 12th General Assembly of the State of Iowa, provides for patenting to the Iowa Falls and Sioux City Railroad Company certain lands granted by Act of Congress, approved May 15th, 1856, upon compliance by said Company with the conditions of said Act of the General Assembly,

And Whereas, The said Railroad Company, in virtue of a compliance with the conditions imposed by said Act of the General Assembly, is entitled to a conveyance of the following described lands situate in Woodbury County, Iowa, and which have been approved and certified to the State under said Act of Congress, to-wit:

The North East quarter of the North East quarter of Section One (1), Township Eighty-nine (89), North of Range Forty-six (46), West of the Fifth (5th) Principal Meridian. Containing Thirty-three and fifty-four hundredths (33.54) of an acre according to Government survey.

Now Therefore, I, Albert B. Cummins, Governor of the State of Iowa, in consideration of the premises and in conformity with the aforesaid Act of the General Assembly, do hereby convey unto the said Iowa Falls & Sioux City Railroad Company and to their assigns, the tracts of land heretofore described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Iowa Falls and Sioux City Railroad Company and their assigns forever.

In Testimony whereof, I, Albert B. Cummins, Governor of the State of Iowa, have caused these letters to be made patent, and the Great Seal of the State of Iowa to be hereunto affixed.

Given under my hand at Des Moines, the second day of February, in the year of our Lord one thousand nine hundred and three and of the State of Iowa the fifty-seventh.

ALBERT B. CUMMINS.

46 By the Governor:
W. B. MARTIN,
Secretary of State,
By C. A. HITES, *Deputy.*

I certify that the foregoing deed is recorded in Vol. 3, page 61.
W. B. MARTIN,
Secretary of State,
[SEAL.] By D. A. HITES, *Deputy.*

Said patent is endorsed "Entered for taxation 10th day of February, 1903. N. Jenness, Auditor." Also endorsed "State of Iowa,

Woodbury County; Filed for record this 10th day of February, 1903, one o'clock p. m., recorded in book 54, Lands, page 219. H. S. Becker, Recorder."

Defendant also offered in evidence as Exhibit No. 3 a certain indenture and deed made and executed 28th day of March, 1887, between the Iowa Falls & Sioux City Railroad Company, and the Iowa Railroad Land Company, whereby said Railroad Company, for a consideration, receipt whereof is hereby acknowledged, bargained and sold and assigned to the Iowa Railroad Land Company all and singular the rights and interest of said Railroad Company in and to all its remaining lands and interests in lands in the State of Iowa expressly including in such bargain and sale all its rights, title, interest, claims, and demands remaining unadjusted and unsatisfied in and to its land grant from the United States inuring under and by virtue of an act of Congress approved May 15th, 1856, entitled, "An act making a grant of lands to the state of Iowa in alternate sections," etc.

Said indenture was duly executed and acknowledged by the said Railroad Company in manner and form provided by law, and was endorsed as follows:

47 "STATE OF IOWA, *Woodbury County, ss:*

Filed for record this 27th day of February, A. D., 1889, 1:30 o'clock p. m., and recorded in Book 35, Lands, page 254.

C. A. DEMUN, *Recorder.*"

Defendant further introduced as Exhibit No. 4 a transcript of the Tract Book of said United States Land Office at Des Moines, Iowa, so far as it relates to timber culture entry No. 607 of John Carraher, being the entry of the tract in question. This exhibit also shows said entries July 11, 1891.

Defendant also introduced as Exhibit 5 a transcript of the register of timber culture entries in the United States Land Office at Des Moines, Iowa, showing that John Carraher's application to enter the tract in question under the Act of March 3, 1873, was made May 31, 1888, and cancelled July 11, 1891.

Exhibits 4 and 5 are each certified as true and literal transcripts of the records in question by Thornton S. Howard, Register, of the United States Land Office of Des Moines, Iowa.

Exhibit "K" offered by plaintiff consists of a map duly authenticated under date April 3, 1903, Commissioner of the General Land Office of the United States under his seal as a copy of so much of the map of definite location of the Dubuque & Pacific Railroad, filed October 13, 1856, in this office, as relates to that part thereof in T. 89, N. R. 47, W., Iowa, and as being a true and literal exemplification from the original on file in said office.

Said map shows said railroad as extending diagonally through the land in question, entering near the northeast corner and leaving said land about twenty rods east of the northwest corner thereof.

Attached to said map but in no manner identified by the certifi-

cate of said Commissioner, or otherwise, is a copy of what
48 purports to be a certificate by S. P. Farley, President of the Dubuque & Pacific Railroad Company, and attested by H. P. Leach, as Secretary of said Company; also signed by B. B. Provoost, Commissioner. Said certificate is dated, "Dubuque, September 27, 1856," and certifies that "this map shows the location of the line and route of the Dubuque & Pacific Railroad in the city of Dubuque to a point on the Missouri river at Sioux City as definitely fixed in compliance with the Act of Congress entitled "An Act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said state," approved May 15, 1856, and in pursuance of a resolution of the Board of Directors of said Railroad Company, passed on the 26th day of May, 1856; directing B. B. Provoost, Chief Engineer, to locate and definitely fix said route.

Attached also to said exhibit is a copy of what purports to be a certificate of Jas. W. Grimes, Governor of the State of Iowa, under date of October 2, 1856; "that this plat or map of the Dubuque & Pacific Railroad Company has been filed in my office by the President of the Dubuque & Pacific Railroad Company, and shows the location of the line and route of said road and branches as definitely fixed by said Company in compliance with the Act of Congress approved May 15, 1868, an "Act making a grant of land to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State" and with an Act of the Legislative Assembly of the State of Iowa approved July 14, 1856, entitled "An Act to accept of and carry into effect the trust conferred upon the State of Iowa by an Act of Congress entitled 'An Act making a grant of land to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, approved May 15, 1856.'"

Exhibit "H" introduced by plaintiff is a lease of his premises in question for the year 1900 from John Carraher to W. R. Reid.

49 Exhibit "L" introduced by plaintiff shows the location of the Illinois Central Railroad Company to be diagonally through the land in question entering near the northeast corner and leaving the same east of the southwest corner thereof.

Exhibit "M" offered by plaintiff is as follows:

EXHIBIT "M."

Office of the Iowa Railroad Land Company.

CEDAR RAPIDS, IOWA, *Aug. 18th*, 1902.

Messrs. Lohr, Gardiner & Lohr, Sioux City, Iowa.

GENTLEMEN: Replying to your favor of Aug. 15th, I beg leave to inform you that the Iowa Railroad Land Company makes no claim to the tract of land described by you, viz.: N. E. ¼ N. E. ¼ of Section 1, Township 89, Range 46, Woodbury Co., Iowa.

Owing to the history of the land grant originally made to the State of Iowa for a line of road from Dubuque to Sioux City, and all

subsequent transactions and peculiar legislation relating thereto, I do not think that a relinquishment from this company would do you any good, but I think if you write the Commissioner of the General Land Office, you will find that the land grant in question has been fully adjusted and the account closed, and that as to all such lands as was not certified to the state for the construction of the railroad aforesaid, that the claims of the state are barred, and that the land would be subject to disposal under the general land laws of the United States, as they may apply to such tracts as the one above referred to is.

Very truly yours, P. E. HALL, *President.*

Exhibit "N," introduced by plaintiff, is as follows:

50 EXHIBIT "N."

Office of the Iowa Railroad Land Company.

CEDAR RAPIDS, IOWA, *Aug. 20th,* 1902.

Messrs. Lohr, Gardiner & Lohr, Sioux City, Iowa.

GENTLEMEN: I have yours of Aug. 19th further in regard to the N. E., N. E. 1-89-46. The Iowa Railroad Land Company succeeded to all the rights of the Iowa Falls & Sioux City Railroad Co., both as to lands certified under the grant, or any claims for grants which the railroad company might have on account of the construction of the road. We do not find that the tract in question had ever been certified to the state, and believing that four or five years ago this entire grant from Dubuque to Sioux City had been fully adjusted, and the account closed, I wrote you as I did —that the Iowa Railroad Land Co. made no claim to this tract. I was quite positive that this grant had been fully adjusted, and feel so now, but when I come to look on our files for papers showing this to be the fact, I do not find them, and it may be that I am mistaken. Whatever rights the Iowa Falls & Sioux City Company may have in the matter would be vested in this company. I will write to our attorneys in Washington and find what the situation is as to the adjustment of the grant, and then can tell you whether we make any claim to the land or not. The difficulty with your client is that it would appear that the title to this tract is still in the United States, against whom you cannot bring any suit, and even if you had our quit-claim your land would be likely to be entered by some scrip holder or jumped by some homesteader. If the facts be as stated in your letter—of which I have no doubt- Mr. Carraher never had any title to the land, and therefore could not convey it to your client. I will write you further about this when we can get more difinite information.

Very truly yours, P. E. HALL, *President.*

51 Exhibit "O," introduced by plaintiff is as follows:

EXHIBIT "O."

"Office of the Iowa Railroad Land Company.

CEDAR RAPIDS, IOWA, *Aug.* 26, 1902.

Messrs. Lohr, Gardiner & Lohr, Sioux City, Iowa.

GENTLEMEN: In the matter of the N. E., N. E., 1-89-46, from investigation made in the United States General Land Office at Washington, I find that there was a final accounting as to the lands owned by the Dubuque & Sioux City Company east of Range 36, but no final settlement as to the lands west of that point. It was this final settlement with the Dubuque & Sioux City Railroad Co. that misled me when I wrote you that this company had no claim on the N. E., N. E. of 1. I am advised that there is still a deficiency in the grant for the western portion of the road, so that whatever claim might have been made by the Iowa Falls & Sioux City Railroad Co. can now be made by this company, and we will have the matter taken up at once.

Very truly yours, P. E. HALL, *President.*"

Exhibits "M," "N" and "O" were each objected to separately by defendant as being incompetent immaterial and irrelevant.

And the foregoing was all of the evidence offered or introduced by either party on said trial; which said evidence was under date of November 9, 1904, duly certified by the presiding Judge, as being all of the evidence as aforesaid, and said evidence and certificate was duly filed in said cause November 10, 1904.

That thereupon, after due argument, said cause was taken under advisement by said Court, and that thereafter, on or about the 29th day of June, 1904, said Court made and entered of record its

52 *Final Decree*

in said cause, finding in favor of plaintiff and against defendant on the issues joined, and decreeing that plaintiff have the relief prayed for in his petition, and that his title be quieted as against all adverse claims of defendant and all persons claiming said premises or any part thereof through or under defendant; that plaintiff be declared and adjudged to be the true and lawful owner of the land in question, to-wit: the N. E. ¼ of the N. E. ¼ of Section 1, Township 89 North, Range 46 West, in Woodbury County, Iowa; and that defendant be forever barred and estopped from having or claiming any right or title to said premises adverse to plaintiff. That defendant's supplementary answer and counterclaim be dismissed, and that plaintiff have and recover his costs of this action. To all of the foregoing decree the Iowa Railroad Land Company at the time duly excepted, and its exceptions were incorporated in said decree.

That thereafter, on or about the 21st day of July, 1904, the defendant, Iowa Railroad Land Company, duly perfected its

Appeal

from said judgment to the Supreme Court of Iowa by serving on plaintiff, Claud F. Blumer, and on the Clerk of the District Court of Woodbury County, Iowa, a notice of appeal in due form as provided by law, and by causing the same to be filed in said cause.

CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Appellant.

The actual cost of printing the foregoing abstract, to appellant, is $54.00.

CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Appellant.

53 In the Supreme Court of Iowa, January Term, 1905. In Equity.

CLAUDE F. BLUMER, Appellee,
vs.
IOWA RAILROAD LAND COMPANY, Appellant.

Appeal from Woodbury District Court.

Hon. J. F. Oliver, Judge.

Lohr, Gardiner & Lohr, Attorneys for Appellee.
Chas. A .Clark, & Son, Wm. G. Clark, Attorneys for Appellant.

Due legal and timely service of Appellee's Amendment to Abstract is hereby accepted and copies received this — day of January, 1905.

—— ——,
Attorneys for Appellant.

Appellee's Amendment to Abstract.

Appellee denies the correctness and completeness of appellant's abstract filed in this case, and for the purpose of supply-
54 ing omissions and correcting errors and defects therein, the following amendment to the abstract is submitted and filed by appellee. And the original abstract filed herein, together with this amendment thereto, constitute a full and complete abstract of the record and contain everything that appears of record in this cause.

In line 14, page 9, "1904" should be *1903*.

After line 9 page 11, insert the following:

Thereafter, on May 28th, 1903, plaintiff filed in said cause the following

Motion.

Now comes the plaintiff in the above cause and moves the court to strike from the files the supplemental answer and counter-claim of the defendant filed May 28th, 1903, for the following reasons:

1. That the same was not filed with or at the same time as the answer, and introduces new issues into the case.

2. That it was not filed with leave of court first had and obtained.

3. That it is inconsistent with the original answer which denied any interest of the defendant in and to the real estate in controversy, and alleged the title thereto to be in the United States, and sets up a title acquired subsequent to plaintiff's title and since the beginning of this suit.

Which motion was by the court overruled and defendant given leave to file its supplemental answer and counter-claim, to which ruling the plaintiff duly excepted.

After the word "plaintiff" at the beginning of line 13, page 12, insert: *offered and.*

In line 9 of page 13, "1898" should be *1888.*

55 After "also" in the second line from the bottom of page 14 insert, *offered and.*

After "also" in line 11, page 15th, insert, *offered and.*

In line 9 from the bottom of page 15, "I" should read *Rentle.*

After "further," line 12, page 16, insert, *offered and.*

After "township," line 19, page 16, insert: "It is the northeast forty of the township. I and my brother rented from old man Carraher."

After "rent," in line 23, page 16, insert: "We rented it in partnership."

After "also," line 7, page 22, insert, *offered in evidence and.*

At the close of line 6, page 24, insert:

Exhibit "A" attached to the depositions of plaintiff is as follows:

[4–142.]

Timber Culture.

Receiver's Receipt No. 607. Application No. 607.

RECEIVER'S OFFICE, DES MOINES, IOWA, *May 31st,* 1888.

Received of John Carraher the sum of Nine Dollars — cents, being the amount of fee and compensation of Register and Receiver for the entry of North East — of N. E. quarter of Section one in township 89 of range 46, under the first section of the act of Congress approved June 14th, 1878, entitled "An act to amend an act entitled an act to encourage the growth of timber on the Western Prairies."

$9.00. M. V. McHENRY, *Receiver.*

56 Endorsed: State of Iowa, Woodbury County. Filed for record this 9 day of Dec. 1891 at 2 o'clock p. m., and recorded in Book 40 Lands, Page 162. C. A. DeMun, Recorder. P. Shontz, Deputy.

In line 15, page 25, "Exhibit 'A' " should be *Exhibit "J."* Said exhibit is as follows:

Office of Geo. W. Wakefield, District Judge.

Judges 4th Judicial District of Iowa:

C. H. Lewis, Sioux City, Iowa,
Scott M. Ladd, Sheldon, Iowa,
Geo. W. Wakefield, Sioux City, Ia.

Counties.	Terms of Court, A. D. 1888.
Harrison,	Jan. 2, March 19, Aug. 27, Oct. 22.
Monona,	Feb. 6, April 16, Sept. 24, Nov. 19.
Cherokee,	Feb. 27, April 30, Oct. 8, Dec. 3.
Osceola,	Jan. 2, April 16, Aug. 27, Oct. 29.
O'Brien,	Jan. 9, April 23, Sept. 10, Nov. 12.
Sioux,	Jan. 23, May 7, Sept. 24, Nov. 26.
Plymouth,	Feb. 6, May 21, Oct. 8, Dec. 10.
Woodbury,	Jan. 2, Mch. 19, May 21, Aug. 28.
Lyon,	March 5, June 11, Oct. 15, Dec. 10, Oct. 29.

SIOUX CITY, IOWA, *June* 2, 1888.

Mr. John Carraher.

MY DEAR SIR: I have the pleasure of handing you herewith your Timber Culture Entry Receiver's Receipt, No. 607, for N. E. ¼ of N. E. ¼ 1, 89, 46.

Resp'y, GEO. W. WAKEFIELD.

P. S.—You can take possession and proceed to comply with the Timber Culture laws.

At the end of line 2, page 27, "northwest" should be *southwest.*

57 After the third line from the bottom of page 27, insert: The same understanding with reference to objections to the depositions and testimony offered by the defendant is entered into between the parties as was made with reference to the testimony offered by the plaintiff.

After the date, "January 22, 1903," in line 3, page 42, insert: Objected to as incompetent, immaterial and irrelevant.

After the fifth line from the bottom of page 44, insert: Objected to as incompetent, immaterial and irrelevant.

After the word "through," at the beginning of the fifth line from the bottom of page 47, insert: *The township in which is located.* And in the next line "land" should be *township,* and "northwest" should be *southwest.*

After line 2, page 49, insert: *The township in which is located.*

LOHR, GARDINER & LOHR,
Attorneys for Appellee.

We hereby certify that the actual cost of printing this Amendment to Abstract was $3.75.

LOHR, GARDINER & LOHR.

58 Filed Nov. 17th, 1905.

In the Supreme Court of Iowa.

CLAUDE F. BLUMER
vs.
IOWA RAILROAD LAND COMPANY, Appellant.

Appeal from the District Court of Woodbury County, J. F. Oliver, Judge.

Action to Quiet Title. Decree as Prayed, from which the Defendant Appeals.

Lohr, Gardner & Lohr, For Appellee.
Chas. A. Clark & Son, and Wm. G. Clark, For Appellant.

LADD, *J.*:

The forty acres of land in controversy *is* located within the place limits of the grant for the benefit of the Dubuque & Sioux City Railroad Company, afterwards transferred to the Iowa Falls & Sioux City Railroad Company, under the Act of Congress approved May 15, 1856. The road was completed prior to 1872 and, though this track was included in the list certified to the state, approval was delayed by the assertion of title to it under the swamp land act until 1878. In 1883 John Carraher applied to the local land office at Des Moines to enter it under the Timber Culture Act but his application was rejected owing to conflict with the grant to the railroad com-
59 pany and the decision was affirmed by the Commissioner of the General Land Office in December of the same year. He then appealed to the Secretary of Interior by whom the previous decisions were approved June 17, 1891. In the meantime the Company had filed (1885) selections of land, including this, in the local land office, as inuring to it, under the grant, and these were accepted by the Register and Receiver and certified to the Commissioner but, under the practice of the department, could not be passed on until Carraher's appeal had been disposed of and when reached in January, 1893, this land, through oversight or other cause was omitted from the certification to the company. In 1888 Carraher presented a second application for the same land to the register and receiver and procured the following receipt:

"*Timber Culture.*

Receiver's Receipt No. 607. Application No. 607.

RECEIVER'S OFFICE, DES MOINES, IOWA, *May 31st*, 1888.

Received of John Carraher the sum of Nine Dollars — cents, being the amount of fee and compensation of Register and Receiver for the entry of North East — of N. E. quarter of Section One in township 89 of range 46, under the first section of the act of Congress approved June 14th, 1878, entitled "An act to amend an act entitled an act to encourage the growth of timber on the Western prairies.'"

$9.00. M. V. McHENRY, *Receiver.*"

This was forwarded to him by his attorney, accompanied by a letter.

"SIOUX CITY, IOWA, *June* 2, 1888.

Mr. John Carraher.

MY DEAR SIR: I have the pleasure of handing you herewith your timber culture entry Receiver's receipt No. 607 for N. E. ¼ of N. E. ¼, 1, 89, 46.

Respectfully, GEO. W. WAKEFIELD.

P. S.—You can take possession and proceed to comply with the timber culture laws."

He proceeded at once to comply with the timber culture act and was in possession of the land from that time until his death in 1901, since which time plaintiff, to whom Carraher conveyed it a few days before he died, has been in possession. Some question is made as to the character of this possession but, without reviewing the evidence, it is sufficient to say that we think it such as is required to constitute adverse possession provided it shall be construed
60 to have been in good faith and under claim of right or color of title. The defendant acquired whatever interest in the land the railroad company had, or might obtain, in 1887 and the correspondence between the parties indicates that it had overlooked its claim thereto and did not receive paper title until January, 1903. This action was begun Oct. 23, 1902, and the ultimate issue to be determined is whether defendant has lost title through the adverse possession of the plaintiff and his grantors. It is conceded that the grant to the railroad company was *in presenti* and as the company had earned the land and all contests pending before the land department had been disposed of prior to 1892 its ownership for the 10 years preceding the commencement of the action was such as to be subject to the doctrine of adverse possession.

Deseret Salt Co. *vs.* Tarpey, 142 U. S. 241.

Toltec Ranch Co. *vs.* Cook, 91 U. S. 532.

Iowa Railroad Land Co. *vs.* Fehring, 101 N. W. 120 and cases cited.

Some claim is made that this case is distinguishable from those first cited in that before certification in 1903 the land department ascertained that the tract was not within six miles of mineral claims and therefore asserted active jurisdiction in determining whether it was within an exception contained in the grant. This was a mere matter of detail in connection with the certification and did not tend to show that the company had not acquired ownership under the grant thirty years previous or that it might not have obtained the certificate at any time after 1891. On the contrary the investigation resulted in confirming such ownership during this long period. As observed in Borden *vs.* N. P. R. Co., 154 U. S. 288 "the delay of the government in issuing a patent does not effect the power of the company to assert in the meantime, by possessory action, its rights to lands which are in fact non-mineral." This was a direct action by the railroad company to recover the lands under the grant and is not otherwise in point. All held in St. P. M. & M. R. Co. *vs.* Olson, 91 N. W. (Minn.) 204 was that in computing the period of the statute of limitations the time a contest between the parties was pending before the land department of the government should not be
61 excluded. The Act of Congress approved Mar. 3, 1887, providing for the adjustment of railroad grants did not purport to disturb the ownership of lands already earned and moreover there was no showing that any readjustment of this grant was attempted. The case is within the rule of the decisions cited and the defendant's title has been such as to be subject to adverse possession at least since 1891.

II. Counsel for appellant first contend that the possession of Carraher was not in good faith. At the time he filed his last application under the tree culture act the appeal from the rejection of his first application had been pending nearly five years. His second application was received in 1888 and not until three years thereafter did the secretary of the Interior affirm the decisions rejecting the first. At that time the filing of the second application was ordered to be cancelled but whether Carraher was advised of this is not disclosed. Not having been accorded a hearing nor given any previous notice of the department's intention to cancel his entry it is not to be inferred that he was subsequently informed of what had been done. See Wilber *vs.* Ry. Co. 116 Iowa 65 and cases cited. He subdued the soil and undertook to plant and cultivate the trees as required by the Act of Congress and there is no ground for saying that he was not acting in good faith save this knowledge of the adverse decision on his first application in 1891. But he was not claiming under that but by virtue of the receipt which had been obtained in 1888 and under which for all that appears he supposed he might acquire the land. That he was mistaken can make no difference so long as he honestly believed, though mistakenly, that he had the right to acquire the land under the tree culture act. He had the assurance of his attorney who was a judge of the district court when the letter was written and this with the acceptance of his application at the local land office might well have convinced him of such right. The

entire doctrine of adverse possession is based upon the existence of defective titles for where titles are good there is no occasion for invoking it. The case differs from Litchfield *vs.* Sewell, 97 Iowa 247 in that there defendant knew he had no right evidence is
62 that Carraher supposed he had been accorded the right to earn it under the Tree Culture act. See Coleman *vs.* Billings, 89 Ill. 183. Barrett *vs.* Stradt, 41 N. W. (Wis.) 439. Good faith is to be presumed and we think the evidence insufficient to justify a finding to the contrary.

III. The plaintiff's claim of right, for the time required to acquire title under the timber culture act, at least, was subservient to that of the government and since then the period of the statute of limitations, has not run. The controlling question then is whether the statutory period shall be computed from the time possession was taken under the receiver's receipt or from the time he might have so complied with the laws which entitle the applicant to a patent. In other words is the claim of right sufficient if against all save the government or must the claim be that of entire ownership and therefore against the world? The possession of Carraher was taken for the purpose of divesting the government of title by complying with the provisions of the timber culture act, and was necessarily hostile to all others. In effect he conceded ownership by the government which unless he executed his purpose, would continue. It was an admission that the United States rather than himself held the fee and was entitled to retain it for the eight years required by the law for him to earn it. See Act of Congress approved June 14, 1878. His first occupancy was under the second entry, in 1888 at which time the land had been earned by the railroad company and as the grant was *in presenti* it or its grantee could have maintained ejectment against him at any time within the period of limitation. When if ever did this period, which is ten years in this state, begin to run?

If after Carraher might have earned and acquired title under the Timber Culture Act then the period had not expired when this action was begun; if when he entered into possession under the receiver's receipt then it has run and plaintiff's title should be quieted. In Cole *vs.* Des Moines Valley R. Co. 76 Iowa 185 title was quieted in the plaintiff though his entry had been cancelled but he had
63 been in adverse possession more than ten years subsequent to the lapse of time within which he might have earned the homestead. The same is true of Wilber *vs.* C. R. & M. R. R. Co., 116 Iowa 65. The Supreme Court of Nebraska, without deciding that the running of the statute might not begin sooner held, in Carroll *vs.* Patrick. 23 Neb. 1634; 37 N. W 671 that "A land officer's certificate therefore, under our statute is color of title; as between individuals, the statute of limitations begins to run from the time the party entering the land did all that was required of him to perfect his purchase." At such time the claim is that of ownership and apparently all lacking is the paper title. It has ceased to be subservient to and has become adverse to the government. See Chicago R. I. & P. R. Co. *vs.* Allfree, 64 Iowa 500. If in fact earned the government retains but the naked legal title and the claimant has become the real

owner. The land is then segregated from the public domain and has become private property.

Durham *vs.* Hussman, 89 Iowa 29.
Nichols *vs.* Council, 51 Ark. 26; 34 Am. St. 20.
Cavender *vs.* Smith, 56 Am. D. 541.
Cady *vs.* Eigney, 7 N. W. 102.
Steele *vs.* Bley, 22 Bley, 22 P. (Utah) 311.
Worth *vs.* Branson, 98 U. S. 118.
Stark *vs.* Starrs, 6 Well 402.

But it is not essential that the land be actually earned in compliance with the law, it is enough that the party in possession in good faith so believes and asserts claim of ownership against the government as well as all others.

Up to this point we apprehend there can be no controversy although language may be found in some decisions indicating that the legal title must have passed from the government. See Arnold *vs.* Woodward, 14 Col. 164. Gibson *vs.* Chonteau, 80 U. S. 92. But the claim of one who enters land with the purpose of acquiring title from the government by compliance with its laws is quite as hostile as though patent had been issued, to all others though subservient to the government. And the weight of authority is to the effect that the claim of right may be subservient to the government if hostile to all others.

64 Clemens *vs.* Runckel, 34 Mo. 41; 84 Am. D. 69.
Mather *vs.* Walsh, 107 Mo. 121; 17 S. W. 755.
Moore *vs.* Brownfield, 7 Wash. 23; 34 Pac. 199.
Lord *vs.* Sawyer, 57 Cal 65.
Alabama State Land Co. *vs.* Kyle, 13 So. (Ala.) 143.
Francoeur *vs.* New House, 43 Fed. R. 236.
Northern Pac. R. Co. *vs.* Kranich, 52 Fed. R. 911.
See Railway Co. *vs.* Townsend, 84 Minn. 152; 86 N. W. 1007.

The principle is well stated in the first mentioned case: "The defendant, and those under whom he claims, did not enter or hold under the plaintiff. They did not recognize his title. They had no privity with him. They do not appear even to have known of the existence of his title. They recognized a title in another person "the United States," who was supposed to be the proprietors and as to the United States, their possession was not hostile; but they did expect to acquire the title of the United States, believing themselves to have right of presumption to the exclusion of all other persons, and a present right to the use and possession of the land.

The defendant has the actual possession, within the meaning of the statute of limitations, with a claim not of absolute title, but of a right which was adverse to all other persons." The only decision we have discovered to the contrary is Altschul *vs.* O'Neil 35 Ore. 202; 58 Pac. 95. But there the company under which plaintiff held became entitled to the land in 1886 and though defendant had occupied it since 1866 he had made no effort to acquire the land from the government as a homestead until 1894. His application was

then rejected by the officers of the local land office and their decision later confirmed on appeal. Suit was begun in 1898 and the statute of limitations of ten years pleaded in bar. It is manifest that defendant was a mere trespasser throughout. His attitude was entirely different from that of a party whose application has been received by the officers of the government and who has entered into possession in good faith and continues therein in what he supposes to be in conformity with the laws of Congress. Nevertheless the court delivered an opinion exhibiting extended research to the effect that a claim of right upon which adverse possession may be based must be against the whole world including the government.

65 No doubt the judges have made all the statements attributed to them in this opinion but it is to be said in extenuation that each had application to the particular facts of the case in hand and that in none save those the court declined to follow was the question as to whether the fact that the claim was subservient to the government involved. Indeed the character of the claim under a government entry does not appear to have been given due consideration. If effective it is exclusive of others. It is an assertion of right to the land, which, if well founded, must defeat the claims of all others. It involves a right of possession as absolute as though the party owned the title. It purports to exclude everyone from its enjoyment and even as against the government to assert the right to divest its title by compliance with the law. The statute of limitations never runs in favor of or against the government and we are inclined to hold, in harmony with the weight of authority, that the relation of the citizen's claim to the government's title ought not to interfere with the running of the statute against all others, and that the period should be computed from the time Carraher entered into possession under the receiver's receipt.

The decree was right and is affirmed.

66 Supreme Court of Iowa.

STATE OF IOWA, *ss:*

Be it Remembered, That on the 17th day of November A. D. 1905, the following proceedings, among others, were had and entered of Record in the Supreme Court of Iowa, to-wit:

Appeal from Woodbury District Court.

CLAUDE F. BLUMER
vs.
IOWA R. R. LAND COMPANY, Appellant.

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly.

It is further considered by the Court that the appl'nt pay the costs of this appeal, taxed at $35.75 and that execution issue therefor.

I hereby certify that the foregoing is a full, true and complete copy of the Record entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 31st day of January A. D. 1906.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk Supreme Court,
By —— ——, *Deputy.*

67 STATE OF IOWA, *ss:*

I, John C. Crockett, Clerk of the Supreme Court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record, opinion, and final judgment in a certain cause tried and determined in the Supreme Court of Iowa between Claude F. Blumer, Plaintiff and Appellee, and Iowa Railroad Land Company, Defendant and Appellant, as full, true and complete as the same are of record and on file in my office.

I further certify that the writ of error, citation, and supersedeas bond with the order of approval to operate as a supersedeas endorsed thereon are hereto attached in original form, and that true and correct copies thereof have been retained in my office and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and the seal of said court at Des Moines, Iowa, this 31st day of January, A. D. 1906.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court of Iowa.

[Endorsed:] Filed Jan. 29, 1906. Jno. C. Crockett, Clerk Supreme Court.

68 In the Supreme Court of the United States.

IOWA RAILROAD LAND COMPANY, Plaintiff in Error,
v.
CLAUDE F. BLUMER, Defendant in Error.

Supersedeas Bond.

Know all men by these presents, That we, The Iowa Railroad Land Company, as principal, and P. E. Hall as surety, are held and firmly bound unto Claude F. Blumer of Woodbury County, Iowa, in the sum of Five Hundred (500.) Dollars, to be paid to the aforesaid Claude F. Blumer, his successors, representatives and assigns, for the payment of which sum well and truly to be made we bind ourselves and each of us and the heirs, executors, and administrators of the said P. E. Hall firmly by these presents.

Witness our signatures hereto this 3d day of January, A. D. 1906.

Whereas the above named Iowa Railroad Land Company has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment and decree rendered in the above entitled action by the Supreme Court of Iowa in which said court the said Claude F. Blumer was impleaded as plaintiff and appellee, and the said Iowa Railroad Land Company as defendant and appellant.

Now therefore the condition of this obligation is such that if the above named Iowa Railroad Land Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea then this obligation shall be void; otherwise to remain in full force and virtue.

IOWA RAILROAD LAND COMPANY,
By WM. G. CLARK, *Its Attorney.*
P. E. HALL, *Surety.*

This bond accepted and approved to operate as a supersedeas and writ allowed this 18 day of January, A. D. 1906.

EMLIN McLAIN,
Justice of the Supreme Court of Iowa.

69 [Endorsed:] Filed Jan. 29, 1906. Jno. C. Crockett, Clerk Supreme Court.

70 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the State of Iowa, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Iowa before you, being the highest court of law or equity in said state, in which a decision could be had on said suit between Claude F. Blumer, Plaintiff, and Appellee, and the Iowa Railroad Land Company, Defendant and Appellant, wherein was claimed by the said defendant and appellant certain rights, privileges and immunities, and a certain title under the Constitution and statutes of the United States, and under a commission held and authority exercised under the United States, and the validity and effect of an authority so exercised under the United States and the decision was against the rights, privileges and immunities, and title, and validity and effect of the authority specially set up and claimed under the Constitution and Statutes of the United States as aforesaid, a manifest error hath happened, to the great damage of the said defendant, Iowa Railroad Land Company, plaintiff in error herein, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the

17th day of February next, in the Supreme Court to be then
71 and there held, that, the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 18th day of January, A. D. 1906.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk United States Circuit Court, Southern District of Iowa.

Allowed:

EMLIN McCLAIN,
Chief Justice of the Supreme Court of the State of Iowa.

Due and legal service of the above writ of error and copy thereof accepted this 26 day of January, A. D. 1906.

LOHR, GARDINER & LOHR,
Attorneys for Defendant.

72 [Endorsed:] Filed Jan. 29, 1906. Jno. C. Crockett, Clerk Supreme Court.

73 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Claude F. Blumer, Defendant in Error:

You are hereby cited and admonished to be and appear within thirty (30) days after this date at a term of the Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of Iowa, wherein the Iowa Railroad Land Company is plaintiff in error, to show cause if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Emlin McClain, Chief Justice of the Supreme Court of Iowa, this 17th day of January, A. D. 1906.

EMLIN McCLAIN,
Chief Justice of the Supreme Court of Iowa.

Due and legal service of the above citation accepted and copy thereof received this 26 day of January, A. D. 1906.

LOHR, GARDINER & LOHR,
Attorneys for Defendant in Error.

74 [Endorsed:] Filed Jan. 29, 1906. Jno. C. Crockett, Clerk Supreme Court.

Endorsed on cover: File No. 20,098. Iowa Supreme Court. Term No. 207. The Iowa Railroad Land Company, plaintiff in error, *vs.* Claude F. Blumer. Filed February 16th, 1906. File No. 20,098.